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UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

ANDREW J. KORNECKI, Individually) No. 2:20-cv-10084-KM-JBC
and on Behalf of All Others Similarly)
Situated,)
Plaintiff,) CLASS ACTION
vs.) DECLARATION OF BRIAN O.
AIRBUS SE, et al.,) O'MARA IN SUPPORT OF: (1) LEAD
Defendants.) PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND APPROVAL OF
PLAN OF ALLOCATION; AND (2)
LEAD COUNSEL'S APPLICATION
FOR AN AWARD OF ATTORNEYS'
FEES AND EXPENSES AND
AWARD TO LEAD PLAINTIFF
PURSUANT TO 15 U.S.C. §78u-
4(a)(4)

BRIAN O. O'MARA hereby declares under penalty of perjury as follows:

1. I am an attorney duly licensed to practice law in the State of California and am admitted to practice in this Court. I am a member of the law firm of Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), counsel for the Court-appointed lead plaintiff Operating Engineers Construction Industry and Miscellaneous Pension Fund ("Pension Fund," "Plaintiff," or "Lead Plaintiff"). I have been actively involved in the investigation, prosecution, and resolution of the above-captioned action ("Action" or "Litigation"), am familiar with its proceedings, and have knowledge of the matters set forth herein based upon my active participation in the Action and the supervision of, or communications with, other individuals who helped prosecute the Action.¹

2. I respectfully submit this declaration pursuant to Rule 23 of the Federal Rules of Civil Procedure, in support of: (a) Lead Plaintiff's motion for final approval of the all-cash settlement of \$5,000,000 (the "Settlement"); (b) Lead Plaintiff's motion for approval of the proposed Plan of Allocation (the "Plan"); and (c) Lead Counsel's application for an award of attorneys' fees and expenses, including an award to Lead Plaintiff for its time representing the Class.

¹ Capitalized terms not otherwise defined herein have the same meanings as that ascribed to them in the Amended Stipulation and Agreement of Settlement (ECF 67-1) (the "Stipulation").

I. INTRODUCTION AND OVERVIEW

3. Lead Plaintiff has achieved a very good settlement for the Class. The Settlement provides for the payment of \$5,000,000 in cash for the benefit of the Class in exchange for a release of the Released Claims (as defined in the Stipulation) against the Defendants. As described herein, the Settlement is the product of Lead Plaintiff's and Lead Counsel's careful factual, legal, and economic analysis, and litigation of the claims and defenses. Specifically, and as further detailed below, Lead Counsel conducted a comprehensive investigation of the factual basis for the claims, including a thorough analysis and evaluation of Defendants' statements before, during, and after the Class Period; Airbus' regulatory filings and submissions; governmental and regulatory enforcement documents; as well as discussions with former employees and economic, market, and damages analyses relating to the claims asserted in the Litigation. Following informed, extensive arm's-length negotiations between experienced counsel, the parties reached an agreement in principle to settle this Action on March 28, 2022. ECF 67-1 at 3.

4. As explained below and in the accompanying brief, this Settlement takes into consideration the significant risks and uncertainties specific to this Litigation. Securities class actions are complex and challenging cases and, given the stakes involved, result in defendants hiring some of the largest law firms and vigorously disputing liability and damages. This case was no exception. The legal risks include

Lead Plaintiff's ability to plead and prove or otherwise establish the elements of its claims, including the elements of falsity, materiality, scienter, loss causation, and damages. While Lead Plaintiff and Lead Counsel believe that the asserted claims have merit, there is a significant chance that one or more of Defendants' arguments may have ultimately proved insurmountable and the Class may have ended up with little or no recovery. If the Litigation were to proceed rather than settle at this juncture, Lead Plaintiff would be subject to the risk that the claims asserted in the Action would be dismissed, that class certification would be denied, or that Defendants' challenges to Lead Plaintiff's allegations would prevail at summary judgment. Even if Lead Plaintiff were to overcome these hurdles, the eventual trial in this Action would last several weeks and would be very complicated for jurors, very expensive for the Class, and Lead Plaintiff would be subject to the risk of losing at trial. And even if Lead Plaintiff were to ultimately prevail at trial, a jury verdict would be subject to appeal. This protracted process would have caused the Class to incur additional expense, regardless of the outcome.

5. Lead Counsel believes that the Settlement is in the best interests of the Class, especially considering its size and the significant risks involved in the case. Rather than proceed with this Litigation for years and risk obtaining little or nothing from Defendants, the Settlement provides the Class with a substantial cash recovery now. Damages were hotly contested and Defendants insisted that none of the alleged

losses were attributable to Company-specific events, maintaining that damages in this Action were zero. In light of this, the Settlement is a significant recovery, provides for a substantial monetary benefit to the Class now and is a very good result in light of the considerable risks and uncertainties involved in continued litigation. Lead Plaintiff and Lead Counsel believe the Settlement to be fair, reasonable, and adequate, in the best interests of the Class, and should be approved by this Court.

6. Lead Counsel seeks an award of attorneys' fees of 30% of the Settlement Amount (or \$1,500,000) plus litigation expenses in the amount of \$67,215.79, with interest on such fees and expenses earned at the same rate earned by the Class on the Settlement Fund.

7. In addition, Lead Plaintiff and Lead Counsel request an award to Lead Plaintiff in the amount of \$2,500. As explained in the declaration submitted by the representative of Lead Plaintiff, M. Scott Anderson ("Anderson Declaration"), Lead Plaintiff expended a substantial amount of time and effort in pursuing the Litigation on behalf of the Class. Specifically, Lead Plaintiff: (a) engaged in numerous meetings, phone conferences, and correspondence with Lead Counsel; (b) reviewed the papers and pleadings filed in the Litigation, including drafts; (c) reviewed detailed correspondence concerning the status of the Litigation; (d) consulted with Lead Counsel regarding litigation and settlement strategy; and (e) was kept informed about

the aspects of the settlement negotiations. Lead Plaintiff's investment of time and effort greatly contributed to the successful resolution of the Litigation.

8. Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice dated May 26, 2022 (ECF 66) as reissued pursuant to the June 8, 2022 Joint Statement and Stipulation and Order Modifying Settlement Schedule (ECF 68) (collectively, the "Preliminary Approval Order"), the Notice of Pendency and Proposed Settlement of Class Action (the "Notice") and the Proof of Claim and Release form ("Proof of Claim," together with the Notice, the "Claims Package") were mailed to all Class Members who could be identified with reasonable effort; the Notice was posted on the Settlement website, www.AirbusSecuritiesSettlement.com, and the Summary Notice was published once in the national edition of *The Wall Street Journal* and once over a national newswire service.

9. The Notice advised all recipients of, among other things: (i) the definition of the Class; (ii) their right to exclude themselves from the Class; (iii) their right to object to any aspect of the Settlement, including the Plan and Lead Counsel's request for attorneys' fees and expenses; and (iv) the procedures and deadline for submitting a Proof of Claim in order to be eligible for a payment from the proceeds of the Settlement.

10. Lead Counsel has been advised by Gilardi & Co. LLC ("Gilardi"), whose retention as Claims Administrator was authorized by the Preliminary Approval Order,

that as of August 25, 2022, a total of 212,587 copies of the Claims Package have been mailed to potential Class Members and their nominees. See ¶¶4-10 to the accompanying Declaration of Ross D. Murray Regarding Notice Dissemination, Publication, and Requests for Exclusion Received to Date (“Murray Decl.”). The Summary Notice was published in *The Wall Street Journal* and over *Business Wire* on June 22, 2022. *Id.*, ¶11. Additionally, the Claims Package, Stipulation, and Preliminary Approval Order have been posted on the website established by Gilardi: www.AirbusSecuritiesSettlement.com. *Id.*, ¶13.

11. The Court-ordered deadline for filing objections to the Settlement or requesting to “opt out” of the Class is September 9, 2022. ECF 66. To date, no objections to any aspect of the Settlement have been filed by Class Members.

II. THE NATURE AND HISTORY OF THE LITIGATION

A. The Commencement of the Action and Appointment of Lead Plaintiff and Lead Counsel, and Efforts to Ensure Compliance with International Law

12. The operative Class Action Complaint (“Complaint”) was filed on August 6, 2020, and alleged violations of the federal securities laws on behalf of a putative class of investors who purchased or otherwise acquired Airbus Securities in the United States between February 24, 2016, and July 30, 2020 (“Class Period”). The Complaint asserts claims under Sections 10(b) and 20(a) of the Securities

Exchange Act of 1934 (15 U.S.C. §§78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. §240.10b-5) against Defendants.

13. Pursuant to 15 U.S.C. §78u-4(a)(3)(B), on October 5, 2020, the Operating Engineers Construction Industry and Miscellaneous Pension Fund moved this Court for an order appointing the Pension Fund as Lead Plaintiff and approving its selection of Robbins Geller Rudman & Dowd LLP as Lead Counsel. ECF 10.

14. On February 19, 2021, the Court issued an order appointing Operating Engineers Construction Industry and Miscellaneous Pension Fund as Lead Plaintiff and approving Lead Plaintiff's selection of Robbins Geller Rudman & Dowd LLP as Lead Counsel, with Carella, Bryne, Cecchi, Olstein, Brody & Agnello, P.C. as Liaison Counsel (together, "Plaintiff's Counsel").

15. Following appointment as Lead Plaintiff and approval of Lead Plaintiff's selection of counsel, Lead Plaintiff sought and was granted an extension under Rule 4(f)(1) of the Federal Rules of Civil Procedure to serve Defendants Airbus SE ("Airbus" or the "Company"), Guillaume M.J.D. Faury, Tom Enders, Dominik Asam, and Harald Wilhelm ("Individual Defendants") (collectively, the "Defendants") through the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 68 U.N.T.S. 163, until March 15, 2022. ECF 23. Airbus SE is headquartered in Leiden, The Netherlands, and the Defendants were believed to be located throughout France

and Germany. While Plaintiff Andrew J. Kornecki and his counsel undertook several efforts to serve the Defendants, those efforts were unsuccessful. ECF 21.

16. Following compliance with The Hague Convention, which required extensive translation and other specialized procedures for service made more cumbersome due to ongoing COVID complications, Lead Plaintiff was successful in serving Airbus SE on or about December 20, 2021, in the Netherlands. As a result, over the following several weeks, each of the remaining defendants were either served with the Complaint or, through counsel, agreed to accept or otherwise waive service of the Complaint.

B. Summary of the Allegations

17. Plaintiff alleges violations of Sections 10(b) and 20(a) of the Exchange Act on behalf of a class of all purchasers of Airbus Securities in the United States between February 24, 2016, and July 30, 2020, inclusive. The Company's securities trade in the United States on the over-the-counter market as ADRs under the ticker symbol "EADSY," and as foreign ordinaries under the ticker symbol "EADSF."

18. Among other things, the Complaint alleges violations of the Exchange Act premised on alleged false and misleading statements that failed to disclose that: (i) Airbus's policies and protocols were insufficient to ensure compliance with relevant anti-corruption laws and regulations; (ii) consequently, Airbus engaged in bribery and corruption to enhance its commercial aircraft, helicopter, and defense business; (iii) as

a result, Airbus's earnings were derived in part from unlawful conduct and therefore unsustainable; (iv) resolution of government investigations and enforcement actions would foreseeably cost Airbus substantial settlements and legal fees and subject the Company to significant continuing government oversight; and (v) as a result of the foregoing, the Company's public statements were materially false and misleading at all relevant times. These allegedly false and misleading statements are further alleged to have artificially inflated the price of Airbus Securities traded in the U.S., and when the truth was eventually disclosed, the price of such Securities declined, resulting in substantial damages to the Class.

C. Lead Plaintiff and Lead Counsel Had an Extensive Understanding of the Facts Before Entering into the Settlement

19. Lead Plaintiff and Lead Counsel conducted an extensive investigation and analysis of the facts and legal issues in this case. This process included, among other things, an analysis of Defendants' public statements before, during, and after the Class Period, including an evaluation of Airbus' regulatory filings, media and analyst reports, press releases, conference call transcripts, and shareholder communications. This also included a thorough analysis of materials concerning the related regulatory probes conducted by the French Parquet National Financier, the United Kingdom's Serious Fraud Office, and the United States Departments of State and Justice, and the attendant enforcement materials related to such probes. Lead Plaintiff and Lead

Counsel also engaged investigators and identified and contacted former employees and potential witnesses to further investigate the factual allegations. In addition, Lead Plaintiff and Lead Counsel retained and worked with economic experts to perform economic, market, and damage analyses relating to the claims asserted in the Litigation and the trading of Airbus Securities. Lead Plaintiff's and Lead Counsel's analysis of the claims and defenses further involved extensive legal research and analysis, concerning both domestic and internal law, in connection with the asserted claims and expected defenses at issue in this Litigation.

20. All of these efforts have enabled Lead Plaintiff and Lead Counsel to endorse the Settlement. Indeed, as a result of the extensive legal, factual, and economic research and analysis conducted by Lead Counsel, Lead Plaintiff and Lead Counsel had a thorough understanding of the strengths and weaknesses of the claims and the defenses at the time the agreement to settle the Action was reached.

D. The Settlement Eliminates the Risks Lead Plaintiff and the Class Faced

21. In deciding to settle the Litigation, Lead Plaintiff and Lead Counsel considered, among other things: (1) the substantial immediate cash benefit to Class Members under the terms of the Stipulation; (2) the possibility of the Litigation being dismissed or the Class not being certified; (3) the expense involved in preparing for and briefing summary judgment and any future appeals; (4) the possibility of the Court granting summary judgment in Defendants' favor; (5) the likelihood of a "battle

of the experts" with respect to the issue of falsity, materiality, loss causation and damages; (6) the possibility of losing at trial; (7) the probability that, even if Lead Plaintiff were to win at trial, Defendants would file post-verdict motions and appeals resulting in additional risk to, and even more delay in obtaining, any recovery for the Class; and (8) the risk that Defendants may ultimately be unable to satisfy a judgment after trial. While Lead Counsel believes that all of the claims asserted against Defendants have merit, there were serious risks as to whether Lead Plaintiff would ultimately prevail on the merits and, even if completely successful, equally serious risks as to the amount of time it would take to collect on any judgment.

III. THE PLAN OF ALLOCATION

22. The Net Settlement Fund will be distributed to Class Members substantially in accordance with the Plan of Allocation set forth in the Notice and approved by the Court. The Plan provides that individuals will only be eligible to participate in the distribution of the Net Settlement Fund if they have an overall net loss on their transactions in Airbus Securities during the Class Period.

23. For purposes of determining the amount an Authorized Claimant may recover under the Plan, Lead Counsel conferred with its damages expert, and the proposed Plan reflects an assessment of the damages consistent with Plaintiff's damages methodology. In the unlikely event there are sufficient funds in the Net Settlement Fund, each Authorized Claimant will receive an amount equal to the

Authorized Claimant's claim. If, however, and as is more likely, the amount in the Net Settlement Fund is not sufficient to permit payment of the total claim of each Authorized Claimant, then each Authorized Claimant shall be paid the percentage of the Net Settlement Fund that each Authorized Claimant's claim bears to the total of the claims of all Authorized Claimants. Payment in this manner shall be deemed conclusive against all Authorized Claimants.

24. To date, there have been no objections to the Plan and Lead Counsel respectfully submits that the Plan is fair and reasonable, and that it should be approved.

IV. LEAD COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

25. Absent the Settlement, there was a real possibility that the Class would be unable to obtain a meaningful recovery. Lead Counsel undertook this prosecution entirely on a contingent-fee basis and assumed significant risk in bringing these claims.

26. Lead Counsel respectfully requests that the Court award attorneys' fees of 30% of the \$5,000,000 Settlement Amount, or \$1,500,000. Lead Counsel believes such a fee is reasonable and appropriate in light of the result obtained and the resources expended by Robbins Geller and Carella Byrne in investigating and prosecuting the case, and the inherent risk of nonpayment from representing the Class on a contingent basis. Lead Counsel further requests an award of \$67,215.79 in

litigation expenses. The legal authorities supporting the requested fees and expenses are set forth in Lead Counsel's separate brief, submitted herewith.

A. Time, Labor, and Fee Percentage Requested

27. Plaintiff's Counsel have devoted a substantial amount of time and resources in the research, investigation, and prosecution of this Litigation.

28. Plaintiff's Counsel have substantial experience representing investors in securities class action cases, including in this District. The identification and background of Robbins Geller and Carella Byrne are included as exhibits to the separate fee and expense declarations submitted by Plaintiff's Counsel ("Fee Declarations").

29. As described above, Plaintiff's Counsel's representation of the Class included interviewing former Airbus employees; analyzing a massive amount of public information; thoroughly researching and evaluating the law pertinent to the asserted claims and anticipated defenses; and consulting with experts and consultants concerning complex economic, loss causation, damages, and market-related issues.

30. Plaintiff's Counsel's experience and advocacy were required in properly evaluating the strengths and weaknesses of the case in an effort to achieve the best possible settlement and convince Defendants of the risks Defendants faced from not settling.

31. The fee request is based upon a percentage of the recovery after discussion with and approval by Lead Plaintiff. *See ¶6 to Anderson Decl.* The fee request is similar to other requests approved by judges in this District, as set forth in Lead Counsel's separate fee brief.

32. The fee request is also reasonable when cross-checked against the lodestar Plaintiff's Counsel incurred in prosecuting the Action. Included with Plaintiff's Counsel's declarations are schedules that summarize the lodestar of each firm's personnel who performed work on the case, as well as expenses incurred by category after having both been reviewed and reduced in the exercise of billing judgment. In particular, the Robbins Geller declaration, and the fee and expense schedules contained within, indicate the amount of time spent on this case by each attorney and member of the professional support staff employed by Lead Counsel, and the lodestar calculation based on its current billing rates.

33. Together, Plaintiff's Counsel have expended 950 hours in the investigation, prosecution, and resolution of the Action. Plaintiff's Counsel's lodestar is \$703,364.

B. The Risk, Magnitude, and Complexity of the Litigation

34. As detailed above, the Litigation involved complex issues of law and fact that presented considerable risk to Lead Plaintiff's case. This case involved litigating complex violations of Sections 10(b) and 20(a) of the Exchange Act. Thus, when

Lead Counsel undertook this representation, there was no assurance that the Litigation would survive a motion to dismiss, motions for class certification or summary judgment, trial and/or any appeals. Therefore, there was no assurance Lead Counsel would recover any payment for its services.

35. Lead Counsel accepted the representation of the Class on a wholly contingent basis in this securities class action even though any payment for Lead Counsel's services – assuming a recovery was obtained – was likely to be delayed for several years. Cases such as this present formidable challenges as there are numerous risks of adverse rulings in favor of defendants at each stage of litigation. If the case had not settled, Lead Counsel was fully prepared to litigate this case through discovery, class certification, summary judgment, trial, and appeal. Each of those stages of litigation poses considerable challenges and expense in cases of this nature.

C. Quality of the Representation

36. Lead Counsel worked diligently to obtain an exceptional result for the Class. From the outset, Lead Counsel employed considerable resources and spent considerable time researching and investigating the facts to support a pleading that could survive a motion to dismiss and position the Litigation for class certification. Theories of loss causation and damages were complex and Lead Counsel devoted much time working with its consultants to analyze issues relating to loss causation and Class-wide damages.

37. The recovery obtained for the Class is the direct result of the significant efforts of highly skilled attorneys who possess substantial experience in the prosecution of complex securities class actions. Lead Counsel is among the most experienced securities practitioners in the country. The Settlement represents a substantial recovery for the Class, one that is attributable to the diligence, determination, hard work, and reputation of Lead Counsel.

38. The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work. Defendants were represented by experienced lawyers from Paul Hastings LLP and Debevoise & Plimpton LLP, well-regarded defense firms. Defense counsel have reputations for vigorous advocacy in the defense of complex cases such as this. The ability of Lead Counsel to obtain a favorable settlement in the face of such quality opposition confirms the excellence of Lead Counsel's representation.

39. When Lead Counsel undertook to represent Lead Plaintiff and the Class, it was with the expectation that it would have to devote a significant amount of time and effort in its prosecution and advance large sums of expenses on discovery and experts. The time spent by Lead Counsel on this case was at the expense of the time that it could have devoted to other matters. Lead Counsel undertook this case solely on a contingent-fee basis, assuming a substantial risk that the case would yield no recovery and leave Lead Counsel uncompensated. Unlike counsel for Defendants,

who are paid an hourly rate and paid for their expenses on a regular basis, Lead Counsel has not been compensated for any time or expenses since this case began. When Lead Counsel undertook to represent Lead Plaintiff and the Class in this matter, it was with the knowledge that Lead Counsel would spend many hours of hard work against capable defense lawyers with no assurance of ever obtaining any compensation for its efforts. The only way Lead Counsel would be compensated was to achieve a successful result.

40. As discussed above, the Settlement is a very good result for the Class in light of the risks and obstacles to recovery presented in this case, including the difficulty in certifying a class, opposing summary judgment, and prevailing at trial. Instead of facing additional years of uncertain, costly and time-consuming litigation, the Settlement will provide Class Members the certainty of a significant recovery now.

V. THE REQUESTED EXPENSES ARE FAIR AND REASONABLE

41. Plaintiff's Counsel seek expenses in the amount of \$67,215.79 in connection with the prosecution of the Litigation. *See* Fee Declarations, submitted herewith.

42. Lead Counsel submits that Plaintiff's Counsel's expenses are reasonable and were necessary for the successful prosecution of this Litigation. Plaintiff's Counsel were aware that they may not recover any of these expenses unless and until

this Litigation was successfully resolved against Defendants. Accordingly, Plaintiff's Counsel took steps to minimize expenses whenever practicable without jeopardizing the vigorous and efficient prosecution of Lead Plaintiff's claims.

43. The requested expenses reflect routine and typical expenditures incurred in the course of litigation, such as investigation services, document processing, expert fees, translation services, and efforts to comply with Hague Convention service requirements. Lead Counsel believes these expenses are reasonable and were necessary for the successful prosecution of the Litigation.

VI. LEAD PLAINTIFF IS ENTITLED TO AN AWARD PURSUANT TO 15 U.S.C. §78u-4(a)(4) BASED ON ITS REPRESENTATION OF THE CLASS

44. Additionally, in accordance with 15 U.S.C. §78u-4(a)(4), Lead Plaintiff seeks an award for its time spent representing the Class in the amount of \$2,500. The amount of time and effort devoted to the Litigation by Lead Plaintiff is detailed in the accompanying Anderson Declaration (at ¶¶4, 7).

45. As discussed in Lead Counsel's accompanying fee brief and in Lead Plaintiff's supporting declaration, the Pension Fund has been fully committed to pursuing the claims on behalf of the Class since it was appointed lead plaintiff. These efforts required the representative of the Pension Fund to dedicate considerable time and resources to this Litigation that would have otherwise been devoted to his regular employment duties.

46. As more fully set forth in Lead Counsel's accompanying fee brief, the efforts expended by Lead Plaintiff during the course of this Litigation are precisely the types of activities courts have found adequate to support an award, and fully support the instant request by Lead Plaintiff for an award of \$2,500.

VII. CONCLUSION

47. In light of the significant recovery to the Class and the substantial risks of this Litigation, as described above and in the accompanying memoranda in support of final approval of the Settlement and an award of attorneys' fees and expenses, Lead Plaintiff and Lead Counsel respectfully submit that the Settlement and Plan of Allocation should be approved as fair and reasonable. In addition, as a result of the recovery obtained in the face of substantial risks, including the contingent nature of the fees and the complexity of the case, Lead Plaintiff and Lead Counsel respectfully submit that the Court should award attorneys' fees in the amount of 30% of the Settlement Amount, plus expenses of \$67,215.79, plus the interest earned thereon at the same rate and for the same period as that earned on the Settlement Fund until paid,

and grant an award of \$2,500 for Lead Plaintiff pursuant to 15 U.S.C. §78u-4(a)(4) in connection with its representation of the Class.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 26th day of August, 2022, at San Diego, California.



BRIAN O. O'MARA